

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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| JOSE L. GALLARDO, |) | |
| |) | |
| Plaintiff, |) | 4:06CV3091 |
| |) | |
| v. |) | |
| |) | ORDER |
| HAROLD W. CLARK, et al, |) | |
| |) | |
| Defendants. |) | |
| |) | |

This matter is before the court on defendants' motion to amend, Filing No. 58, the court's memorandum and order of July 24, 2007, Filing No. 56.¹ The court granted in part and denied in part defendants' motion for summary judgment in that order. Defendants now move to amend the court's order, arguing that there is no evidence to support any claims against Fred Britten, Warden of the Tecumseh State Correctional Institute, and Harold Clarke, Director of the Nebraska Department of Correctional Services, in their individual capacities. Defendants assert that neither of them had personal involvement in the medical care of the plaintiff and liability cannot be predicated solely on the basis of respondeat superior. This court has previously determined that to be the case. See Filing No. 39. According to defendants, they had no knowledge of any excessive risk to inmate health or safety or of a risk of serious harm. See *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (defining knowledge requirement). Defendants claim that plaintiff has produced no evidence that Britten or Clarke was deliberately indifferent to plaintiff's medical needs nor any evidence that either of these two was involved in direct medical care.

¹Plaintiff has not responded to defendants' motion.

The court has carefully reviewed the record and determines that the motion to amend should be granted. The court agrees that a mere supervisory responsibility is not sufficient to impose liability on Britten or Clarke. *Camberos v. Branstad*, 73 F.3d 174, 176 (8th Cir. 1995); Memorandum and Order on Motion to Dismiss, Filing No. 39. Plaintiff has offered absolutely no evidence that either of these defendants had anything other than supervisory roles. There is no evidence they knew of plaintiff's condition; there is no evidence they ignored plaintiff's condition; and there is no evidence they were deliberately indifferent to plaintiff's condition. Accordingly, the court will grant the motion to amend.

THEREFORE, IT IS ORDERED that defendants' motion to amend, Filing No. 58, is granted. Defendants Fred Britten and Harold Clarke are dismissed as individual defendants in this lawsuit.

DATED this 13th day of September, 2007.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Court